
Appendix E-6
Yountville Interim Water Agreement

Copy to: Bill Russ, L7
Msmt Team
Date: 2/7/01
File: Vault

**AGREEMENT BETWEEN TOWN OF YOUNTVILLE
AND
CITY OF AMERICAN CANYON
FOR DELIVERY OF INTERIM WATER AND INTERIM USE OF
NBA PIPELINE CAPACITY**

This agreement ("Interim Agreement") made this 7th day of December, 2000, by and between the City of American Canyon, a municipal corporation hereinafter referred to as "AMERICAN CANYON," and the Town of Yountville, a municipal corporation hereinafter referred to as "YOUNTVILLE."

RECITALS

WHEREAS, AMERICAN CANYON is entitled to delivery of water from the North Bay Aqueduct (hereinafter "NBA entitlement") pursuant to a contract between AMERICAN CANYON and the Napa County Flood Control and Water Conservation District dated November 15, 1966; and

WHEREAS, AMERICAN CANYON and YOUNTVILLE have executed an agreement (hereinafter "AGREEMENT") under which AMERICAN CANYON has agreed to transfer a portion of its entitlement to use of NBA capacity to YOUNTVILLE for proper compensation and after satisfaction of certain pre-conditions; and

WHEREAS, the Napa County Flood Control and Water Conservation District has commissioned a study entitled "Hydraulic Analysis of North Bay Aqueduct Facilities, Phase II" by Navigant Consulting, Inc., dated June, 2000 ("Navigant Study") that has identified possible additional pipeline capacity in the North Bay Aqueduct that may become available to AMERICAN CANYON and YOUNTVILLE; and

WHEREAS, one of the pre-conditions to the AGREEMENT is that the California Department of Water Resources' written concurrence in the finding of the Navigant Study that NBA capacity available to AMERICAN CANYON and YOUNTVILLE is at least 250 acre feet per year greater than the previously calculated capacity; and

WHEREAS, YOUNTVILLE is currently in need of additional supplies of reliable, good quality water to meet the water needs of its customers; and

WHEREAS, AMERICAN CANYON currently has sufficient water supplies and operational flexibility to allow it to provide interim water supplies to YOUNTVILLE pending the satisfaction of the pre-conditions to the AGREEMENT; and

WHEREAS, AMERICAN CANYON is willing to provide YOUNTVILLE with such interim water supplies pending the satisfaction of the pre-conditions to the AGREEMENT;

NOW THEREFORE THE PARTIES HEREBY AGREE AS FOLLOWS:

1. Lease of NBA Capacity.

a) Capacity Lease

AMERICAN CANYON shall lease to YOUNTVILLE during the term of this Interim Agreement so much of its right and interest in capacity in the NBA as is necessary for conveyance of water requested in writing by YOUNTVILLE, up to 250 acre feet of water per year, at a maximum rate of delivery of 0.46 cubic feet per second ("cfs"), for treatment and delivery to YOUNTVILLE.

2. Delivery of Water.

Upon execution of this Interim Agreement by all parties, AMERICAN CANYON hereby agrees to transfer to YOUNTVILLE, each year until the effective date of the AGREEMENT, Interim Water requested in writing by YOUNTVILLE up to 250 acre-feet per year (up to eleven percent of which may be taken in any thirty day period, which is equivalent to 0.46 cfs) of the water available to AMERICAN CANYON under its North Bay Aqueduct (NBA) entitlement.

In the event any State and/or Federal agency restricts AMERICAN CANYON'S total water entitlement, for any reason whatsoever, YOUNTVILLE'S entitlement under this Interim Agreement shall be reduced for the same period and in the same proportion to the reduction imposed on AMERICAN CANYON by said agenc(ies).

3. Compensation:

a) Payment Obligations Associated with Conveyance Capacity

YOUNTVILLE shall assume a proportional share of the responsibility for all payment obligations associated with the entitlement to the leased capacity in the NBA accruing during the term of this Interim Agreement. Yountville shall reimburse American Canyon for the proportion of NBA capital repayment cost that is estimated to be up to \$24,000/year. In addition, Yountville shall reimburse American Canyon for the NBA operation and maintenance costs associated with delivery of the requested water to the Jameson Canyon Water Treatment Plant (estimated at \$90/acre foot.)

b) Other Costs.

(i) Legal Services

YOUNTVILLE shall be responsible for all costs related to preparation and drafting of this Interim Agreement. Other than as specifically specified herein, each party shall be responsible for its own legal services necessary for review and approval of this Agreement.

(ii) Unanticipated Costs.

Responsibility for any unforeseen or unusual costs resulting from the delivery of water or the lease of NBA capacity provided for in this Interim Agreement will be negotiated between the parties. It is anticipated as a general principle, however, that YOUNTVILLE will be responsible for any additional costs associated with delivery of NBA water to YOUNTVILLE.

c) Interest

Interest shall accrue on any unpaid charges to be paid by YOUNTVILLE to AMERICAN CANYON pursuant to this Interim Agreement, at the rate of 6% per annum from their due date until paid, and YOUNTVILLE hereby agrees to pay such interest.

4. Termination.

In the event that the AGREEMENT does not become effective within five years of the date of this Interim Agreement, and upon one year's written notice from AMERICAN CANYON to YOUNTVILLE, this Interim Agreement may be terminated by AMERICAN CANYON, *provided however, that* AMERICAN CANYON agrees not to terminate this Interim Agreement unless the NBA pipeline capacity leased to YOUNTVILLE hereunder is required to serve the needs of AMERICAN CANYON's customers and it is not economically practicable to use other sources of water or pipeline capacity.

5. Recognition of Governing Law and Contracts.

This agreement is entered into subject to the provisions of existing state statutes and existing contractual provisions among the Napa County Flood Control and Water Conservation District, the State of California and the City of Napa.

6. Notices.

All notices, requests, payments and demands in connection with this agreement shall be in writing and shall be properly delivered in person or sent by United States mail, first class, postage prepaid, as specified below:

(a) Town of Yountville
Attention: Town Administrator
6550 Yount Street
Yountville, CA 94599-1271

(b) City of American Canyon
Attention: City Manager
2185 Elliott Drive
American Canyon, CA 94505-1331

A copy of any such notices shall be sent to the Napa County Flood Control and Water Conservation District at the following address:

Napa County Flood Control & Water Conservation District
1195 Third Street, Room 301
Napa, CA 94559-3082

7. Amendments.

This contract may be amended at any time by mutual written agreement of the parties, except insofar as any proposed amendments are in any way contrary to applicable law.

8. Waiver; Remedies Cumulative.

Failure by a party to insist upon the strict performance of any of the provisions of this contract by the other party, irrespective of the length of time for which such failure continues, shall not constitute a waiver of such party's right to demand strict compliance by such other party in the future. No waiver by a party of a default or breach of the other party shall be effective or binding upon such party unless made in writing by such party, and no such waiver shall be implied from any omission by a party to take any action with respect to such default or breach. No express written waiver of a specified default or breach shall affect any other default or breach and/or period of time specified. All of the remedies permitted or available to a party under this contract, or at law or in equity, shall be cumulative and alternative, and invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other available right or remedy.

9. Construction of Language of Agreement.

The provisions of this agreement shall be construed as a whole according to its common meaning and purpose of providing a public benefit and not strictly for or against any party. It shall be construed consistent with the provisions hereof, in order to achieve the objectives and purposes of the parties. Wherever required by the context, the singular shall include the plural and vice versa, and the masculine gender shall include the feminine or neutral genders or vice versa.

10. Mitigation of Damages.

In all situations arising out of this agreement, the parties shall attempt to avoid and minimize the damages resulting from the conduct of the other party.

11. Governing Law.

This contract, and the rights and obligations of the parties, shall be governed and interpreted in accordance with the laws of the State of California.

12. Captions.

The captions or headings in this agreement are for convenience only and in no way define, limit or describe the scope or intent of any provision or section of the agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

For CITY OF AMERICAN CANYON

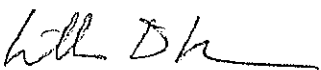
For TOWN OF YOUNTVILLE:

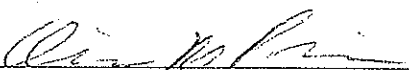
APPROVED AS TO FORM:

APPROVED AS TO FORM:

LAW OFFICES OF WILLIAM D. ROSS
A Professional Corporation

COOMBS & DUNLAP
A Professional Corporation

By: 
William D. Ross, City Attorney
City of American Canyon


By: 
Diane Price, Town Attorney
Town of Yountville

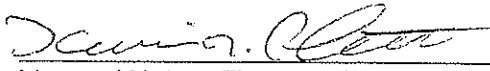
APPROVED:

APPROVED:

CITY OF AMERICAN CANYON

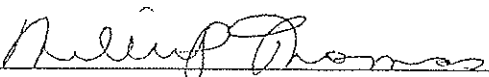
TOWN OF YOUNTVILLE

By: 
Mark Joseph, City Manager
City of American Canyon

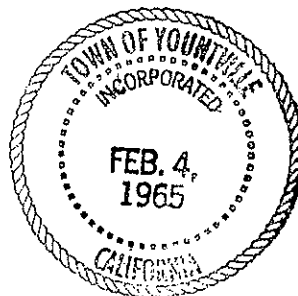
By: 
Nancy Weiss, Town Administrator by
Town of Yountville Kevin R. Plett
Acting Town Administrator

ATTEST:

ATTEST:

By: 
Millett Thomas, Deputy City Clerk
City of American Canyon

By: 
Joyce Houghton, Deputy City Clerk
Town of Yountville



Town of Yountville
Resolution Number 1838-01

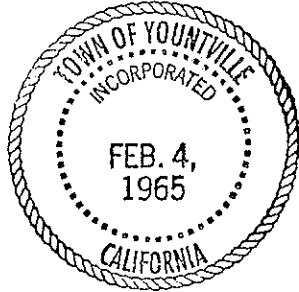
Approving an Agreement Between the Town of Yountville And the City of American Canyon for Delivery of Interim Water and Interim Use of NBA Pipeline Capacity

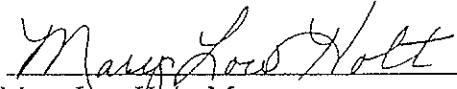
Recitals

- A. The City of American Canyon is entitled to delivery of water from the North Bay Aqueduct ("NBA entitlement") pursuant to a contract between American Canyon and the Napa County Flood Control and Water Conservation District dated November 15, 1966.
- B. American Canyon and Yountville have executed an agreement (hereinafter "Agreement") under which American Canyon has agreed to transfer a portion of its entitlement to use of NBA capacity to Yountville for proper compensation and after satisfaction of certain pre-conditions.
- C. The Napa County Flood Control and Water Conservation District has commissioned a study entitled "Hydraulic Analysis of North Bay Aqueduct Facilities, Phase II" by Navigant Consulting, Inc., dated June, 2000 ("Navigant Study") that has identified possible additional pipeline capacity in the North Bay Aqueduct that may become available to American Canyon and Yountville.
- D. One of the pre-conditions to the Agreement is that the California Department of Water Resources' concur in the finding of the Navigant Study that NBA capacity available to American Canyon and Yountville is at least 250 acre feet per year greater than the previously calculated capacity.
- E. Yountville is currently in need of additional supplies of reliable, good quality water to meet the water needs of its customers.
- F. American Canyon currently has sufficient water supplies and operational flexibility to allow it to provide interim water supplies to Yountville pending the satisfaction of the pre-conditions to the Agreement.
- G. American Canyon is willing to provide Yountville with such interim water supplies pending the satisfaction of the pre-conditions to the Agreement.

Now therefore, the Town Council of the Town of Yountville does resolve as follows:

The attached Agreement between the Town of Yountville and the City of American Canyon for Delivery of Interim Water and Interim Use of NBA Pipeline Capacity is hereby approved. The Town Administrator is authorized to execute the Agreement on behalf of the Town.



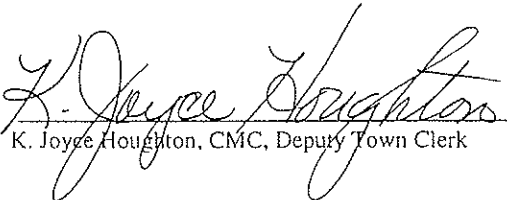

Mary Lou Holt, Mayor

ATTEST:

State of California)
County of Napa)§
Town of Yountville)

I, K. Joyce Houghton, Deputy Town Clerk of the Town of Yountville, do hereby certify that the foregoing Resolution was duly adopted by the Town Council of the Town of Yountville at a regular meeting thereof held on the 16th day of January 2001, by the following vote:

AYES:	Thollander, Jefferson, Holt;
NOES:	None;
ABSENT:	Knight, Miner;
ABSTAIN:	None.


K. Joyce Houghton, CMC, Deputy Town Clerk